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12 **UNITED STATES DISTRICT COURT**

13 **DISTRICT OF NEVADA**

14 UNITED STATES OF AMERICA,
15 Plaintiff,
16 v.
17 DAVID LEE KAGEL,
18 Defendant.

19 Case No. 2:24-cr-00024-GMN-DJA-1
20 **STIPULATION TO CONTINUE
21 CHANGE OF PLEA HEARING
(Second Request)**

22 IT IS HEREBY STIPULATED AND AGREED, by and between Jason M. Frierson, United
23 States Attorney, and Theodore M. Kneller, Trial Attorney, U.S. Department of Justice, counsel for the
24 United States of America, and Rene L. Valladares, Federal Public Defender, and Benjamin F. J. Nemec,
25 Assistant Federal Public Defender, counsel for David Lee Kagel, that the change of plea hearing
26 currently scheduled on April 1, 2024, be vacated and continued to April 29, 2024.

27 This Stipulation is entered into for the following reasons:

28 1. On June 28, 2023, in United States District Court for the Central District of California,
the government simultaneously filed an information charging the defendant, Mr. Kagel, with one count
of conspiracy to commit commodity fraud in violation of title 18, United States Code, Section 371 and
a plea agreement between Mr. Kagel and the government.

29 2. On September 6, 2023, Mr. Kagel was arraigned before Magistrate Judge Brianna Fuller
Mircheff in the United States District Court for the Central District of California.

1 3. On January 30, 2024, the government filed a consent to transfer jurisdiction, pursuant to
2 Rule 20 of the Federal Rules of Criminal Procedure, to transfer the case to the District of Nevada.

3 4. On February 1, 2024, the case was transferred to the District of Nevada and entered on
4 the Court's docket.

5 5. On February 12, 2024, the Court ordered a change of plea hearing for March 11, 2024.

6 6. On February 14, 2024, new defense counsel for Mr. Kagel filed a notice of appearance
7 in this case for the first time.

8 7. On March 4, 2024, the government notified counsel for Mr. Kagel that the bail report
9 indicated the Mr. Kagel has frontal lobe dementia.

10 8. On March 7, 2024, the parties filed with the Court a joint stipulation to continue the
11 change of plea hearing that was then scheduled for March 11, 2024.

12 9. Counsel for Mr. Kagel proposed, and the parties agreed, to stipulate to a continuance of
13 at least 30 days to allow additional time for the defense to determine if Mr. Kagel is competent to enter
14 a plea.

15 10. On March 7, 2024, the Court entered an order granting the stipulation to continue and re-
16 scheduled the change of plea hearing 21 days later on April 1, 2024.

17 11. As requested by counsel for Mr. Kagel and stipulated by the parties, the defense
18 anticipates that it will need at least 30 days from the initial change of plea hearing date of March 11,
19 2024 to confer with Mr. Kagel and determine whether Mr. Kagel is competent to enter a plea.

20 12. Lead government counsel works and resides in Washington, D.C., and lead government
21 counsel has a conflict that prevents his travel to the District of Nevada on April 1, 2024.

22 13. The defendant is not in custody and agrees with the need for the continuance.

23 14. The parties agree to the continuance.

24 15. In light of the foregoing, counsel for defendant also represents that additional time is
25 necessary to confer with defendant.

26 16. Defense counsel represents that denial of this request for continuance could result in a
27 miscarriage of justice.

1 17. The requested continuance is not based on congestion of the Court's calendar, lack of
2 diligent preparation on the part of the attorney for the government or the defense, or failure on the part
3 of the attorney for the government to obtain available witnesses.

4 18. Based on all of the foregoing, for purposes of computing the date under the Speedy Trial
5 Act by which defendant's trial must commence, the parties agree that the time period of February 1,
6 2024 to March 11, 2024, inclusive, should be excluded pursuant to 18 U.S.C. §§ 3161(h)(1)(E) because
7 the delay results from the transfer of the case from another district under the Federal Rules of Criminal
8 Procedure.

9 19. In addition, based on all of the foregoing, for purposes of computing the date under the
10 Speedy Trial Act by which defendant's trial must commence, the parties agree that the time period of
11 March 11, 2024 to April 29, 2024, inclusive, should be excluded pursuant to 18 U.S.C. § 3161(h)(1)(A)
12 because the delay results from the defense's examination of Mr. Kagel to determine the mental
13 competency of the defendant.

14 20. Furthermore, for purposes of computing the date under the Speedy Trial Act by which
15 defendant's trial must commence, the parties agree that the time period of February 1 to April 29, 2024,
16 inclusive, should be excluded pursuant to 18 U.S.C. §§ 3161(h)(7)(A), (h)(7)(B)(i), and (h)(7)(B)(iv)
17 because the delay results from a continuance granted by the Court at defendant's request, without
18 government objection, on the basis of the Court's finding that: (i) the ends of justice served by the
19 continuance outweigh the best interest of the public and defendant in a speedy trial; (ii) failure to grant
20 the continuance would be likely to make a continuation of the proceeding impossible, or result in a
21 miscarriage of justice; and (iii) failure to grant the continuance would unreasonably deny defendant
22 continuity of counsel and would deny defense counsel the reasonable time necessary for effective
23 preparation, taking into account the exercise of due diligence.

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1 This is the second request for a continuance of the change of plea hearing.

2 DATED this 15th day of March, 2024.

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4 RENE L. VALLADARES
5 Federal Public Defender

JASON M. FRIERSON
United States Attorney

6 By */s/ Benjamin F. J. Nemec*
7 BENJAMIN F. J. NEMEC
8 Assistant Federal Public Defender

By */s/ Theodore M. Kneller*
THEODORE M. KNELLER
Trial Attorney, U.S. Department of Justice

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12 **UNITED STATES DISTRICT COURT**

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14 UNITED STATES OF AMERICA,
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19 Case No. 2:24-cr-00024-GMN-DJA-1

20 **ORDER**

21 The Court has read and considered the Stipulation Regarding Request for (1) Continuance of
22 Trial Date and (2) Findings of Excludable Time Periods Pursuant to Speedy Trial Act, filed by the
23 parties in this matter on March 15, 2024. The Court hereby finds that the Stipulation, which this Court
24 incorporates by reference into this Order, demonstrates facts that support a continuance of the trial date
25 in this matter, and provides good cause for a finding of excludable time pursuant to the Speedy Trial
26 Act, 18 U.S.C. § 3161.

27 The Court further finds that: (i) the ends of justice served by the continuance outweigh the best
28 interest of the public and defendant in a speedy trial; (ii) failure to grant the continuance would be
likely to make a continuation of the proceeding impossible, or result in a miscarriage of justice; and (iii)
failure to grant the continuance would unreasonably deny defendant continuity of counsel and would
deny defense counsel the reasonable time necessary for effective preparation, taking into account the
exercise of due diligence.

1 THEREFORE, FOR GOOD CAUSE SHOWN:

2 1. The change of plea hearing in this matter is continued from April 1, 2024 to April 29,
3 2024 at the hour of 9:00 a.m.; or to a time and date convenient to the Court.

4 2. The time period of February 1, 2024 to April 29, 2024, inclusive, is excluded in
5 computing the time within which the trial must commence, pursuant to 18 U.S.C. §§ 3161(h)(1)(A),
6 (1)(E), (7)(A), (h)(7)(B)(i), (h)(7)(B)(ii), and (h)(7)(B)(iv).

7 3. Nothing in this Order shall preclude a finding that other provisions of the Speedy Trial
8 Act dictate that additional time periods are excluded from the period within which trial must
9 commence. Moreover, the same provisions and/or other provisions of the Speedy Trial Act may in the
10 future authorize the exclusion of additional time periods from the period within which trial must
11 commence.

12 IT IS SO ORDERED.

13 DATED this 15 day of March, 2024.

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UNITED STATES DISTRICT JUDGE